

PROPOSALS DUE: December 10<sup>th</sup>, 2021



FIGURE 1 THE FORMER IMPERIAL HOTEL AT THE CORNER OF FALLS AND FIRST STREET CIRCA 1920

First and Old Falls Street  
Development Opportunity  
Downtown Niagara Falls, NY



USA Niagara  
Development  
Corporation

## EXECUTIVE SUMMARY

**Background.** USA Niagara Development Corporation, (“USA Niagara”), a subsidiary of the New York State Urban Development Corporation d/b/a Empire State Development (“ESD” – a public benefit corporation of the State of New York), is issuing this request for proposals (“RFP”) for redevelopment of a prime property in the heart of downtown Niagara Falls, New York. The property (or “the Site”) is located at the intersection of First Street and Old Falls Street, two blocks from the entrance to Niagara Falls State Park, which enjoys over 9 million annual visitors. Totalling 1.829 acres with an appraised value of \$4,000,000, the Site was acquired in March 2019 through a strategic land acquisition program as part of the second phase of Governor Andrew M. Cuomo’s “Buffalo Billion” Economic Development Initiative. The program was created to assemble long-dormant properties located near Niagara Falls State Park in order to remove blight from the downtown area and expand the density of uses as downtown Niagara Falls grows into a year-round, sustainable neighborhood. Acquisition of this key parcel was intended to support significant new mixed-use development.

### **Site Details.**

Parcel Area: 1.829 acres  
Zoning: Downtown “D1-A” District – Uses permitted: mix of hotel, commercial/retail uses, and residential; 100% coverage; 320 feet max height (before bonuses).  
Utilities: All major services available  
Condition: Site will be shovel-ready

**Proposals.** While open to any/all permitted uses, proposals are intended to focus upon mixed-use infill development that further enhances the walkability and density of both First Street and Old Falls Street, while expanding street-level retail offerings to visitors and residents. Previous market analysis suggests reasonable unmet demand along Old Falls Street corridor for at least one major upper-upscale hotel, additional food-and-beverage facilities, as well as new residential units. A pre-proposal meeting/site visit will be held at the Conference Center of Niagara Falls at **10:00 A.M. on October 14<sup>th</sup>, 2021**. Any questions or clarifications should be submitted by **4:00 P.M. on November 19<sup>th</sup>, 2021** to the project mailbox: [FirstOldFallsRFP2021@esd.ny.gov](mailto:FirstOldFallsRFP2021@esd.ny.gov).

**Submission Requirements.** Respondents are required to submit all required documents electronically to [FirstOldFallsRFP2021@esd.ny.gov](mailto:FirstOldFallsRFP2021@esd.ny.gov) on or before **4:00 P.M. Local Time, on December 10th, 2021** and must include all items specified in this RFP.. Proposals submitted after the deadline will not be considered.

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## INTRODUCTION

USA Niagara Development Corporation, (“USA Niagara”), a subsidiary of the New York State Urban Development Corporation d/b/a Empire State Development (“ESD”), a public benefit corporation of the State of New York, is issuing this request for proposals (“RFP”) for the redevelopment of a property located at the intersection of First Street and Old Falls Street (“the Property”) or (“the Site”) in downtown Niagara Falls, New York. The redevelopment of this Property represents a unique opportunity to contribute to the redevelopment of an historic commercial district in an iconic American city.

USA Niagara acquired this Property in March 2019 through a strategic land acquisition program as part of the second phase of Governor Andrew M. Cuomo’s “Buffalo Billion” Economic Development Initiative. The program was created to assemble long-dormant properties located near Niagara Falls State Park in order to remove blight from the downtown area and expand the density of uses as downtown Niagara Falls grows into a year-round, sustainable neighborhood. Acquisition of these key parcels is intended to support significant new mixed-use development.

Niagara Falls continues to be one of the world’s most recognizable destinations. With over 9 million annual visitors, the city is part of an international tourism juggernaut. Notably, it is also positioned as the geographic center of a bi-national “Golden Horseshoe” extending from the Greater Toronto Area through Western New York to the Finger Lakes, possessing a regional population of over 14 million people. Niagara Falls is within a day’s drive of all major Eastern and Midwestern United States and Southern Canada markets. The aggregate population of this market area exceeds 100 million. With recent generational investments into infrastructure, transportation and tourism development, the city is poised to see significant economic growth in the coming years.



## USA Niagara Development Corporation

USA Niagara supports and promotes economic development initiatives in Niagara Falls by leveraging private investment and encouraging growth and renewal of the tourism industry in the City of Niagara Falls. Niagara Falls is one of New York's greatest assets and one of the most beautiful natural resources in the world, attracting millions of visitors to New York State to behold the beauty, power and majesty of this natural marvel.

Through USA Niagara, ESD has kicked off a revival in Niagara Falls, NY. USA Niagara was established in 2001 to focus on the revitalization of downtown Niagara Falls after decades of decline. The agency works directly with state and local elected officials, civic groups, community leaders and other state agencies on a variety of urban and economic development initiatives. USA Niagara supports a variety of projects in Niagara Falls that create jobs, encourage businesses investment, improve regional infrastructure and promote tourism activity.

In addition to working collaboratively with other state agencies on the removal of the Robert Moses Parkway and spearheading the re-establishment of Old Falls Street, USA Niagara has been directly involved the development of the Niagara Falls Culinary Institute, the Niagara Falls Conference and Events Center, and almost \$200 million worth of investment into new hotels. USA Niagara's efforts are integral to setting Niagara Falls on a path to prosperity for the next decade and beyond.



**FIGURE 2 USA NIAGARA'S WORK HAS RE-CONNECTED DOWNTOWN NIAGARA FALLS TO ITS SIGNATURE STATE PARK**

## Background

The Site is the former Smokin' Joe's Native Center, located at **333 First Street**, the intersection of Old Falls and First Streets (see **Figure 1-1**). It sits between the entrance to Niagara Falls State Park, which enjoys roughly 9 million annual visitors, and the Seneca Niagara Casino, one of the busiest gaming facilities in the state. Due to its location, Old Falls Street is the most heavily trafficked pedestrian route in Western New York. The Site totals 1.829 acres with a value of \$4,000,000 (based on a 2018 appraisal).

The Site was acquired by USA Niagara as part of a broader strategic property acquisition initiative to build on USA Niagara's efforts to revitalize the downtown core. To date, USA Niagara has acquired roughly 14 acres of downtown real estate. After a robust strategic planning process, the Site was chosen as the first redevelopment target, although USA Niagara is currently evaluating interim and long term uses for the balance of its real estate portfolio.

The Site has street frontages on both Old Falls Street, and First Street. It sits adjacent to the Sheraton Hotel and a municipal parking lot and wraps around the First Presbyterian Church. To the immediate south of the Site is the Conference and Event Center of Niagara Falls, a major economic driver for downtown Niagara Falls. To the west is the former Rainbow Centre Mall, which is home to the Niagara Falls Culinary Institute, as well as a vacant mall concourse and parking ramp currently undergoing an expansive renovation effort.

Old Falls Street was once the center of commerce in Niagara Falls' South End (also referred to as "downtown"). With the Niagara Falls State Park and a bustling residential neighborhood to the south, Old Falls Street boasted a vibrant mix of uses in a dense cluster of multi-story brick and masonry buildings. Just up the block from the Cataract and Strand theaters, as well as countless offices, shops and restaurants, the Site was formerly the home to the Imperial Hotel and multiple other hotels, boarding houses and retail venues.

As with much of downtown Niagara Falls, the Imperial Hotel was razed during the implementation of the city's ill fated "urban renewal" program. After sitting vacant for some time, "Falls Street Station" was constructed on the Site in the 1980s. Within a few years the venture failed, and the property was operated as a night club, a call center, a shopping bazaar and a Native American cultural exhibit.

Due to the prime downtown location, the zoning allowance, and the condition of the existing building though, USA Niagara will demolish the marginal, low slung structures currently on the Site. USA Niagara's preferred use of the Site is a newly constructed, mixed-use building with ground floor retail and hotel, office or residential uses, reminiscent of what once stood on the Site. All respondents should assume a clear, shovel ready site when formulating their redevelopment proposals.

## Site Context & Advantages

- **A Key Location** The Site sits at the nexus of downtown Niagara Falls, near the entrance to Niagara Falls State Park, and its development has the potential to shape first impressions and capitalize on the Park's millions of annual visitors. In turn, it is located within two blocks from the Rainbow Bridge Plaza connecting Niagara Falls, NY to our Canadian sister city of Niagara Falls, Ontario and the rapidly growing Southern Ontario region (over 12 million people).
- **Clear Title & Ownership** Fee title/ownership of the Site rest with USA Niagara and is not impeded by any unusual constraints.
- **A Well Developed Transportation Infrastructure** The Site is located on major urban thoroughfares and along intra-city transit routes, as well as express routes to two major airports, Niagara Falls International Airport (IAG) and Buffalo-Niagara International Airport (BUF), that together serve a full range of regular direct service by all major and low-cost carriers and charter companies, as well as facilities at IAG for wide-body aircraft. In addition, the Site has easy access to a regional mass transit system that includes intra-city bus service, tourist-oriented trolley service, access to intercity coach carrier and international passenger rail.
- **Renowned Outdoor Recreation Opportunities** It is within short walking distance of a variety of scenic recreational amenities (e.g., Maid of the Mist, Upper Rapids, Goat Island, Upper and Lower River Multi-Use Trails, Aquarium of Niagara, Gorge Discovery Center, etc.). The City of Niagara Falls recently implemented a successful bike share program, and has recently invested in its bike facilities to more efficiently connect the numerous State Parks along the Niagara Gorge, including Whirlpool, Devil's Hole, ArtPark and Fort Niagara.
- **Knowledge and Power** The Site also benefits from its proximity to one of the world's largest hydroelectric power production facilities at the New York Power Authority's Niagara Power Project; and a number of colleges and universities, including Niagara University, the University of Buffalo, Niagara County Community College, the Niagara Falls Culinary Institute, Buffalo State College, Canisius College and Erie Community College, among others.
- **Within USA Niagara "Development District"** The Site is within the USA Niagara Downtown Development District, and thus it benefits from various USA Niagara investments and activities over the last decade. It also makes it potentially eligible for site-specific development assistance—although any public investments will largely be a function of the scale, proven project need and economic impact of a proposal. In collaboration with USA Niagara, the ESD Regional Office has also committed \$20 million to revitalize other commercial corridors in the city.

Moreover, the Site would build upon and gain from several existing features and projects downtown, including the following:

- **Niagara Falls State Park** Designed by renowned landscape architect Frederick Law Olmsted and on the National Register of Historic Places, Niagara Falls State Park has undergone \$92 million in recent rehabilitation projects including upgrades of the park's observation tower, addition of new multi-purpose trails, and restoration of natural areas. This work continues to position the park as the defining feature of the City and its greatest resource. The recently completed removal of three miles of the former Robert Moses Parkway resulted in the largest expansion of the park since 1885. These new sections of park, the Riverway to the south and Gorgeview to the north, have reconnected the city to its waterfront, and are among the premier urban nature trails in the country. During the 2019 tourism season, the park had its busiest year on record, with an estimated 9.6 million visitors.
- **Old Falls Street** The Site has a major frontage on Old Falls Street. USA Niagara and the City of Niagara Falls'

\$10 million revitalization of the street in 2010 fully restored access from Niagara Falls State Park to Third Street and the Seneca Niagara Casino. This effort re-introduced vehicular traffic; added extensive streetscape and a number of environmentally sustainable features (winning it the moniker of WNY's "greenest" street); and re-established the street as a hub for placemaking, festivals and events downtown. The City entered into an agreement with USA Niagara to manage and maintain the street as an extension of its operation of the Conference Center Niagara Falls (see below). In addition to regular refuse pick-up, flower planting, and sidewalk plowing, this management also includes sponsoring a full program of annual activities ranging from concerts, festivals and outdoor movie nights to daily food trucks and children's activities.

- **Seneca Niagara Casino Complex** Opened on New Year's Eve 2002 in a Phillip Johnson-designed structure, this full-range facility is one block from the Project Site. With 150,000-SF of premium gaming and entertainment facilities, it attracts millions of patrons a year. In 2005, the complex's Four-diamond, Luxury Spa Hotel was opened, containing 600 rooms and day-spa facilities. While Casino patrons present obvious prospects for additional hospitality and entertainment facilities downtown, opportunities of the complex's employment base should not be overlooked. With a staff of over 2,000, it is the largest employer in the City and one of the largest employers in Niagara County.
- **The Conference & Event Center Niagara Falls** Completed in 2004, this \$20 million facility replaced the meeting functions of the former Niagara Falls Convention and Civic Center. The 116,000-SF facility located on Old Falls Street contains exhibit/concert hall facilities; ballroom and pre-function space; and state-of-the-art meeting space. It regularly hosts more than 250 annual events and over 65,000 persons. During the latest year with available data, the facility reached \$3 million in revenue.
- **Rainbow Centre Mall** After shuttering its doors in 2000, the former Rainbow Centre Mall sat completely vacant until the Niagara Falls Culinary Institute, operated by Niagara County Community College, opened in 2010. With world class kitchens, a fine dining restaurant, café and bookstore, the facility occupies 90,000 square feet. USA Niagara is currently spearheading the redesign and reuse of the remaining 200,000 square feet of the former mall concourse. Marvel is leading the design effort, which will ultimately turn the building "inside out", reconnecting it with the street grid and creating new facades and uses that generate activity and vibrancy for downtown. Multiple anchor tenants have already been identified. This project will also renovate and overhaul the existing attached parking ramp with state of the art revenue collection, providing ample parking to service future development on the Site.

## Market Context for New Development

Downtown Niagara Falls sits in close proximity to several of the largest employers in Niagara County, including the Niagara Falls Memorial Medical Center campus (over 1,100 employees), the Seneca Niagara Casino Complex (approximately 2,000 employees), the Niagara Falls Culinary Institute (potential growth to 1,000 students/faculty), Niagara University (3,500 students/faculty) and the Niagara Falls Air Reserve Station (2,600 employees). In the past decade, downtown has also seen a growing concentration of hotels, restaurants, and attractions.

The residential market in and around downtown is expanding. Despite the concentration of employment in the neighborhood, there is a shortage of workforce housing. Quality apartments downtown find tenants quickly and unmet demand remains at all income levels. At least forty apartments are currently under construction, and roughly fifty more have been completed in the last five years. A recently completed mixed-use development project downtown managed to lease up all 17 apartments during the middle of the COVID-19 pandemic.



Although the inventory of available hotel rooms in Niagara Falls grew steadily prior to 2020, occupancy rates and average daily rate remained steady, likely due to an increase in visitation and tourism spend. While downtown Niagara Falls has seen an influx of upscale and mid-scale hotels over the course of the last decade, there is still room for growth at the upper-upscale level, as well as in the suites-style market.

Aside from expanding housing and hospitality options in downtown Niagara Falls, the advancement of retail and commercial activity is vital to USA Niagara's development strategy. Redevelopment of vacant and underutilized properties for neighborhood retail will allow for street activity historically seen in this neighborhood pre-urban renewal. Significant potential for growth in the restaurant and live entertainment space exists downtown, even allowing for the seasonality of visitation. Past assessments suggested opportunity for roughly \$25 million in food/beverage sales in the downtown market annually and visitation has grown since then.

Although Niagara County boasts two of the region's best music venues (the Rapids Theatre and Artpark) downtown still lacks a premier live music venue. And despite the massive growth of the industry in Western New York, Niagara Falls does not have an operating brewery or distillery. High quality entertainment venues like galleries, theaters or comedy clubs would also be a welcomed edition to the tourism landscape.

## THE CALL FOR PROPOSALS



FIGURE 3 RENDERING MIXED-USE REDEVELOPMENT ON OLD FALLS STREET, REMINISCENT OF THE FORMER IMPERIAL HOTEL

### Objectives

This RFP envisions redevelopment of the Site with a high-density mix of uses and active ground-level retail that would contribute to visitor and resident offerings along the Old Falls Street corridor. The particular mix of uses and proportions attributed to each are being left solely to the knowledge and creativity of prospective proposers.

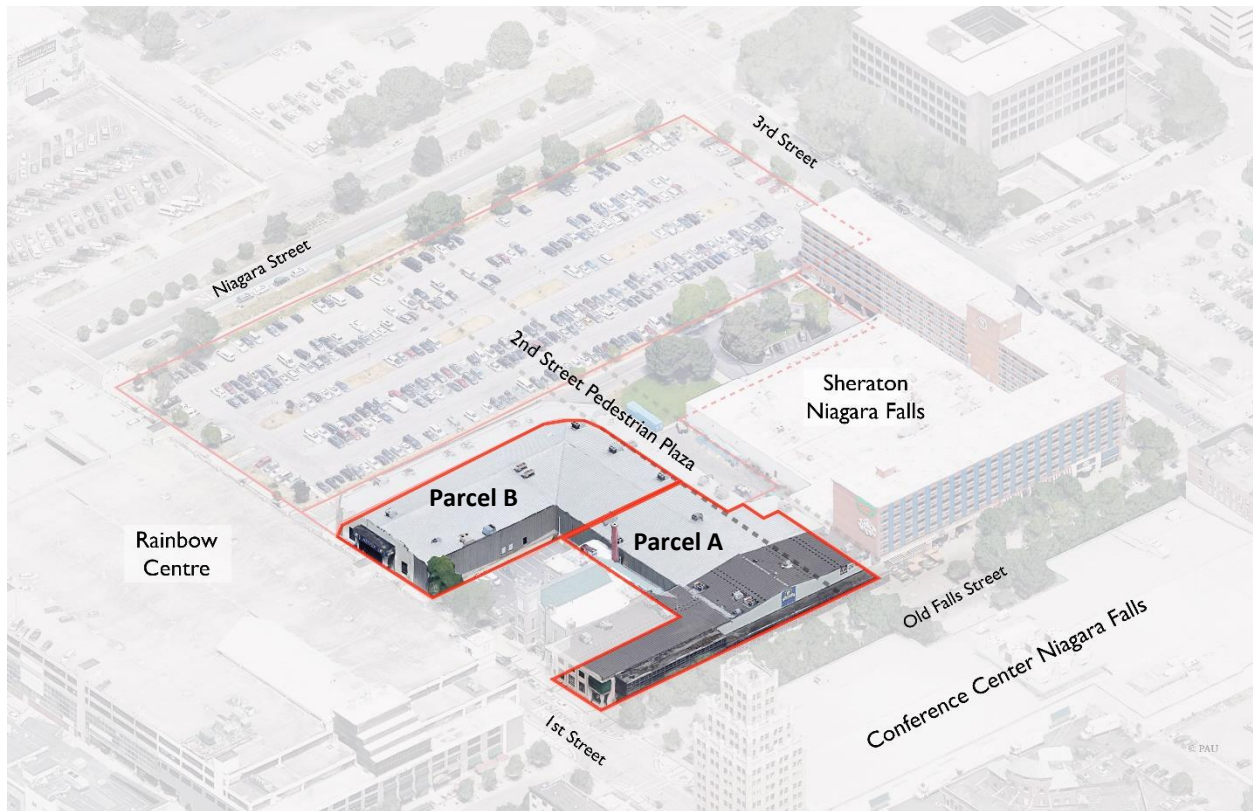
The redevelopment must be consistent with the overall policies for Old Falls Street outlined in the *Niagara Falls Comprehensive Plan*, be built in accordance with development regulations specified in the *Niagara Falls Zoning Ordinance*, and be designed in a manner that is consistent with the *USA Niagara Urban Design Guidelines* (see appendix).

The overall objectives of the redevelopment of the Project are as follows:

- Elimination of superblocks and restoration of a fine grained, walkable urban fabric;
- Contribution to a lively, urbane setting and a substantial increase in street-level interaction;
- Realization of a development that best complements or achieves synergies related to, but not limited to the following:
  - The adaptive reuse of the Rainbow Centre Mall
  - The improvement of the operating performance/potential of other established uses in the downtown area (e.g. Existing private businesses, State Park resources, Conference Center Niagara Falls, Casino) by expanding the overall level of activity downtown
  - The catalyzation of further redevelopment and/or desired land use types on surrounding sites/areas of downtown;

- Expansion of the availability of goods, services, and entertainment venues available to visitors and residents;
- Creation of new jobs, increased tax base, and further investment in Niagara Falls;
- Stabilization and preservation of the Site value; and
- A mutually beneficial public/private partnership with the goal of returning the Site to a productive and self-sustaining use.

## Project Site



**FIGURE 4** THE DEVELOPMENT SITE IN ITS CURRENT CONDITION IS OUTLINED IN RED. THE BUILDING CURRENTLY ON SITE WILL BE DEMOLISHED PRIOR TO DISPOSITION OF THE PROPERTY.

street of 20 feet, south of First Presbyterian Church to allow for sight lines of the bell tower.

- **Subdivision.** Upon demolition of the existing structures, the site will be divided into two distinct properties of record (along the alignment identified in Figure 4). For the purposes of this RFP, the property fronting on Old Falls Street will be referred to as “Parcel A”, and the Property fronting on First Street will be referred to as “Parcel B”. If a proposal includes the entire site, USA Niagara will consider alternative lot divisions, as long as the property is divided into a minimum of two distinct properties of record.
- **Height.** Due to the location of the property, and USA Niagara’s desire to add density to the site, four stories (or roughly 40 feet) will be the minimum height allowance. Zoning allows for a maximum building height of 320 feet.

- **Parking.** Surface parking will only be acceptable in the rear of a proposed development. Proposals that include parking along Old Falls Street or First Street will not be considered. Parking will be available at the Rainbow Centre ramp, which is a municipally owned facility currently undergoing a renovation.
- **Development Program.** USA Niagara will only consider a mixed-use development, with ground floor retail and at least 10 residential units. In addition to compliance with the Niagara Falls Zoning Code and Comprehensive Plan, as well as USA Niagara's Design Standards, development should include facades with high levels of transparency on the ground floor, as well as articulated entrances. Use of durable, traditional building materials will be required.

## Policies, Regulations, and Guidelines

Given the prominence of the Project Site in the downtown area, USA Niagara is committed to a high quality of development and architectural character, as well as projects that are sensitive to overall urban design issues. Design quality will be a significant factor in the evaluation of proposals. Preference will be given to proposals that interpret or draw inspiration from the historic buildings that formerly occupied the site.

The architects, engineers and other design professionals to be retained in connection with submitted proposals must review various policy documents outlined below.

Upon selection as preferred developer, USA Niagara retains the right to approve all design professionals to be retained in connection with redevelopment of the Site.



FIGURE 5 RENDERING OF POTENTIAL INFILL DEVELOPMENT ON THE SITE

## Comprehensive Plan

The 2009 *Niagara Falls Comprehensive Plan* outlined a broad strategy of public reinvestment along Old Falls Street in the vicinity of the Project Site to foster a denser cluster of tourist-oriented mix uses. Page 49 of the Plan states:



*"[Old Falls Street] should be a catalyst for private mixed-use, hotel and tourism intensification on adjacent sites and must be designed to a very high quality of design excellence to realize desired reinvestment. New development encouraged through its creation should establish a strong urban built form edge...[.] Active uses at grade, such as cafés, restaurants and high-quality retail offerings, should also help to animate the indoor/outdoor interface."*

A full copy of the Comprehensive Plan can be downloaded on the City website using the following link:

[https://niagarafallsusa.org/download/Planning/2020\\_documents/Comprehensive-Plan-2009.pdf](https://niagarafallsusa.org/download/Planning/2020_documents/Comprehensive-Plan-2009.pdf)

### Zoning

The Site is classified under the 2009 *Niagara Falls Zoning Ordinance* as within D1: Downtown Zoning District, and specifically within D1-A sub-district. The purpose of this district is to provide for a diverse combination of commercial, residential, and mixed-use building types within the City's core tourist areas. Development is intended to be very intense with high lot coverage and pedestrian-oriented with a strong emphasis on creating safe, active, and inviting streetscapes.

Given its intent to encourage a dense development pattern, the D1 sub-districts permit zero setbacks and 100% lot coverage, and are differentiated only by permitted maximum building height. In the D1-A sub-district, a maximum base building height of 320 feet is permitted. The full set of zoning requirements applicable to the Project Site may be downloaded from the City's website using the following link:

[https://niagarafallsusa.org/download/Code-Enforcement/NF\\_CE\\_ZoningOrdinance\\_RD.pdf](https://niagarafallsusa.org/download/Code-Enforcement/NF_CE_ZoningOrdinance_RD.pdf)

Requirements for the D1 District begin on Page 48 of the Zoning Ordinance.

### USA NIAGARA Urban Design Standards

Development proposals should also comply with USA Niagara Urban Design Guidelines, which apply to all projects with USA Niagara involvement. They expand the more general standards in the City of *Niagara Falls Zoning Ordinance* and provide more detail regarding desired activities and visual attributes of proposed buildings in downtown Niagara Falls. Whereas these guidelines are not specific regulations, their purpose is to give strong direction and help provide for an expeditious review/response to proposed development proposals.

Overall, the guidelines are intended to foster an urbane, traditional city setting that is evidenced in building uses and orientation, materials/finishes, scale, and other design features. These involve, but are not limited to, the following:

- "Zero-lot-line" development to establish a defined "street wall" along major public streets (e.g., Old Falls Street, Rainbow Boulevard, etc.).
- Incorporation of design elements that give a strong visual demarcation of the "base", "middle", and "top" of new buildings.
- Incorporation of street level uses that promotes and contributes to pedestrian activity and street life (e.g., retail, cultural, food and beverage, and/or entertainment) and/or with activities that "spill over" into the sidewalk area.
- Use of traditional and natural building materials (brick, stone, steel, and wood) and natural finish systems, particularly on the ground-story level of a building.

The full set of USA Niagara Design Guidelines may be downloaded from the USA Niagara website using the following link:

[https://esd.ny.gov/sites/default/files/USAN\\_Urban\\_Design\\_Standards.pdf](https://esd.ny.gov/sites/default/files/USAN_Urban_Design_Standards.pdf)

### Inspections

If Proposers wish to undertake an intensive on-site inspection of the premises, they must arrange such through USA Niagara. Neither the State nor USA Niagara shall be responsible or liable for any damages or injury to proposers or their employees, agents, contractors and representatives resulting from any visit to the Site whether or not scheduled in accordance with this RFP. Proposers are advised that they must execute and deliver to USA Niagara a Hold Harmless Agreement (without omission, addition, amendment, modification or supplement) prior to any Site visit. A pre-proposal meeting/site visit, open to any parties interested in submitting proposals, will be held at the Conference Center of Niagara Falls at **10:00 A.M. on October 14th, 2021**. Please RSVP no later than October 8<sup>th</sup> at 5:00PM if you or a representative of your company wish to attend.



## SUBMISSION REQUIREMENTS

### Submission

The following are the requirements for all proposal submissions. USA Niagara reserves the right, in its sole discretion, to reject any Proposal that is deemed incomplete or unresponsive to the RFP requirements. USA Niagara also reserves the right, in its sole discretion, to reject any and all proposals for any reason or for no reason, and to proceed (or not proceed) with the development of the Site (either by itself or in conjunction with one or more third-party) without completing this RFP process.

In evaluating the capabilities of the Respondent, USA Niagara may utilize any and all information available (including information not provided by the Respondent). Proposals should clearly and concisely state the unique capabilities, experience, and advantages of the Respondent, and demonstrate the Respondent's capability to satisfy the requirements and objectives set forth in this RFP. USA Niagara further reserves the right to ask additional written or oral clarifying questions to all Respondents or to a subset of Respondents. The initial Proposals should be no longer than 100 pages of text.

Respondent's financial offer for the Site should assume that it will be transferred in "AS IS" and "WHERE IS" condition. Each complete proposal must contain the following elements:

#### 1. Respondent Description

Each entity submitting a Proposal must demonstrate sufficient financial resources and professional ability to develop the Site in a manner consistent with its Proposal. In addition, all Respondents must complete and submit the NYS Vendor Responsibility Questionnaire, which is described in Section 10 Procurement Forms and Requirements.

Each Proposal must include a description of the Respondent owner (under a sale) or tenant entity (under a long-term lease) or the development team, including:

- The intended form and structure of the owner or tenant entity and any proposed partnership or joint venture must be clearly explained. A chart/diagram of the owner or tenant entity, showing structure (percentages) of ownership and investment must be included.
- Name, address, phone number and email and of each member of the owner or tenant entity. Respondents must provide the Federal EIN numbers of the development entity and identify a primary contact person.
- Current operating budget and previous three (3) years of audited financials for all entities with an ownership percentage in the Proposal.
- A copy of the most recent credit report for key members of the owner or tenant entity.
- Documentation addressing whether the Respondent, or any participating member of the team, has been involved in any litigation or legal dispute regarding a real estate venture during the past five years.
- Evidence of ability to finance the Project including letters of interest and/or intent from equity sources and lenders.
- Evidence of Designated Developer's commitment to pay, from the date of its conditional designation, the security deposit.
- Evidence of Designated Developer's commitment to pay the full purchase price for the Site (including 10% at designation and balance at closing, if a purchase transaction) or 10% of the net present value of the schedule of lease payments (at designation, if a lease transaction).

- Any additional documentation or information evidencing the strength of the Respondent and its ability to complete the Project in a timely manner.

## 2. Project Description

The Project description should include a detailed narrative describing all relevant aspects of the Project and any plans/timing of phasing of the development. The description should address:

- The proposed use(s) and building program.
- Type, bulk and size of each component of the development program (gross and net square footages).
- Description of the proposed uses, a list of potential tenants and any letters of interest and/or intent from potential tenants and a description of how such tenants align with the design requirements set forth in Section 2 of this RFP.
- The description should address how the proposal will advance the objectives set forth in Section 2 above.
- The description should address how the proposal will meet the requirements of Section 3 above.
- The description must include the estimated construction budget.

## 3. Financial Offer Terms

Respondents are encouraged to submit offers to purchase the Site, expressed in a fixed dollar amount, which may be nominal, to be paid at closing. Under this scenario, transfer of title will be by quit-claim deed (without any representations or warranties) at the closing. The Designated Developer will be required to enter into a Development Agreement that provides the terms of any phasing of the Project and agreements to develop the Site in compliance with the proposed development plan.

## 4. Site Plan and Architectural Design

Each entity submitting a Proposal must provide the following:

- A summary of the proposed building program for the Project with square footages for each use.
- At a minimum, a set of drawings on 11" x 17" paper, showing the proposed Project and a set of concept, ground-level renderings of the proposed Project showing the principal elevations and massing, floor plans for each use, streetscape and landscape plans, entry feature and signage.
- A description of the proposed exterior materials and other relevant specifications.
- A description of sustainable building practices that will be incorporated into the project during construction/renovation and operation of the improvements.
- A description of the proposed project's adherence (or not) to the USA Niagara Design Guidelines.

## 5. Development Timeframe

Respondent must submit a development timeline (subdivided into phases, if necessary), identifying the estimated length of time to reach key milestones, including: commencement and completion of design; financing; commencement and completion of construction; potential tenants; and operational stabilization for each component of the development program. Any contingencies that may affect this timeline should be identified.

6. Team Member Qualifications

- Identification and qualifications of each member of the development team, including all persons or entities that will design, develop, or operate the Project, as well as the attorney, architect, engineer, general contractor and other professionals, as appropriate, including leasing and management, who will be involved with this Project.
- A description of similar projects undertaken by the members of the Respondent's team, particularly mixed-use, urban development projects (including a statement of the dollar value of such projects, the project manager's name and key partners, where applicable).
- A summary of the availability of each of the principal members of each firm and their availability for commitment to the Project.
- Documentation addressing whether any participating team members have been involved in litigation or legal dispute regarding a real estate venture during the past five years.
- Background information of the owner or tenant entity, including resumes describing the relevant experience of all principal members. This information must be submitted for every participant in a joint venture and should highlight similar projects (including a project description and approximate dollar value for each).

7. Project Information Supplement ("RFP Workbook")

Respondents are required to include a completed RFP Workbook on portable USB drive with Proposal for this solicitation and send to: Robert.Sozanski@esd.ny.gov. Subject line should include "RFP Workbook for 1<sup>st</sup> and Old Falls RFP by [insert Developer's Name]".

Instructions for completing the RFP Workbook are included in the Excel file that has been posted with this RFP as Appendix F. In addition to emailing a copy of the RFP Workbook, Respondents should submit hard copies of all RFP Workbook pages in their Proposals.

Among other items, completing the RFP Workbook requires Respondents to enter and submit information on the following subjects:

- a) Key General Assumptions: Sustainability; Public Benefits; Project requirements; Project Timeline; Design Guideline Overrides (if applicable); Economic Benefits; MWBE and SDVOB Participation; NYS Vendor Participation; Project Contingencies; and Endorsements.
- b) Key Financial Assumptions: Development and Leasing Summary; Estimated Development Cost and Rents by Use; Financing Summary; and Stabilization Information.
- c) Development Budget: Acquisition; Site Work; Construction; Soft Costs; Construction Finance; Permanent Finance; Reserves; Marketing and Other.

- d) Development Timeline: Projected Expenditures and Square Footage of Development by Phase.
- e) Sources of Funds: Debt Attraction Calculation; Proposed Permanent Financing.
- f) Pro Forma: Cash flows for the development and Project operation periods, including details of any as-of-right or discretionary real estate tax, other tax, energy or other governmental benefits assumed in the model. The cash flows should include a section outlining all assumptions on which all calculations were based, including minimum returns sought. This data should include all necessary capital investments over time and reserves and debt service payments associated with the financings. Respondents are required to complete all Pro Forma worksheets in the format in the format provided by the RFP Workbook. If Respondents wish, however, they may also complete a supplementary, fully optional Pro Forma as identified on the tab “Pro Forma (Hardcode)” in order to highlight any discrepancies between the existing format constraints and a more precisely modeled Project.

In completing the RFP Workbook, with respect to financial information, Proposals should address the following:

- Pro forma cash flows in live-linked Excel format for the development and Project operation periods, including details of any as-of-right or discretionary real estate tax exemptions, other tax exemptions and energy or other governmental benefits assumed in the model. The cash flows should include a section outlining all assumptions on which all calculations were based, including minimum returns sought. This data should extend out to at least thirty (30) years of operations and include all necessary capital investments over time and reserves and debt service payments associated with the financings.
- Construction/renovation sources, budget, and uses of funds, including details of equity and financing sources and a breakout of all soft and hard costs and development and financing fees. Indicate escalation rates to account for any increases in construction/renovation costs in the budget or contingencies.
- Permanent sources and uses of funds, including details of equity and financing sources and all development fees and financing fees to be paid.

## Procurement Forms and Requirements

Additional requirements for this RFP are described below. Relevant forms, where required to be submitted, must be executed and included in the submission in the same order as listed below:

1. State Finance Law §§139-j and 139-k forms
2. New York State Vendor Responsibility Questionnaire For-Profit Business Entity
3. Iran Divestment Act Statement
4. Non-Discrimination and Contractor & Supplier Diversity Requirements
5. Encouraging the Use of NYS Businesses in Contract Performance Form
6. Certification Under State Tax Law Section 5-a
7. Schedule A (for review only—no separate form requirement)
8. Project Sunlight (for review only—no separate form requirement)
9. W-9 Form

- 10. EO 177 Certification
- 11. Conflicts of Interest

### **1. State Finance Law Sections 139-j and 139-k forms**

State Finance Law Sections 139-j and 139-k (collectively, the “Procurement Requirements”) apply to this RFP. These Procurement Requirements: (1) govern permissible communications between potential respondents and ESD or other involved governmental entities with respect to this RFP; (2) provide for increased disclosure in the public procurement process through identification of persons or organizations whose function is to influence procurement contracts, public works agreements and real property transactions; and (3) establish sanctions for knowing and willful violations of the provisions of the Procurement Requirements, including disqualification from eligibility for an award of any contract pursuant to this RFP. Compliance with the Procurement Requirements requires that all communications regarding this RFP, from the time of its issuance through final award and execution of any resulting contract (the “Restricted Period”), be conducted only with the designated contact persons listed below; the completion by Respondents of the Offerer Disclosure of Prior Non-Responsibility Determinations, and the Offerer’s Affirmation of Understanding and Agreement pursuant to State Finance Law (each form is accessible at the Required Forms for Vendors link at the ESD web site under “RFPs/RFOs”); and periodic updating of such forms during the term of any contract resulting from this RFP.

Respondents must submit the Offerer Disclosure of Prior Non-Responsibility Determinations, and the Offerer’s Affirmation of Understanding and Agreement pursuant to State Finance Law as part of their submittal. Copies of these forms are available at:

[http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/SF\\_Law139\\_JK.pdf](http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/SF_Law139_JK.pdf).

The Procurement Requirements also require ESD staff to obtain and report certain information when contacted by prospective respondents during the Restricted Period, make a determination of the responsibility of Respondents and make all such information publicly available in accordance with applicable law. If a prospective respondent is found to have knowingly and willfully violated the State Finance Law provisions, that prospective respondent and its subsidiaries, related or successor entities will be determined to be a non-responsible Respondent and will not be awarded any contract issued pursuant to this solicitation. In addition, two such findings of non-responsibility within a four-year period can result in debarment from obtaining any New York State governmental procurement contract.

For the purpose of compliance with State Finance Law Sections 139-j, contact with Robert Sozanski, Project Manager is considered permissible. The designated contact account for this solicitation is email to: Robert.Sozanski@esd.ny.gov.

This is not a complete presentation of the provisions of the Procurement Requirements. A copy of State Finance Law Sections 139-j and 139-k can be found at:

<http://esd.ny.gov/CorporateInformation/RFPs.html>

(under “ESD Policy Regarding Permissible Contacts under SFL 139”).

All potential Respondents are solely responsible for full compliance with the Procurement Requirements. Both the prime consultant and any sub-consultants complete the forms required above.

### **2. Vendor Responsibility**

All Respondents to this RFP must be “responsible,” which in this context means that they must have the requisite financial ability, organizational capacity and legal authority to carry out its obligations under this RFP, and in addition must demonstrate that both the Respondent and its principals have and will maintain the level of integrity needed to contract with New York State entities such as ESD. Further, the Respondent must show satisfactory performance of all prior government contracts. Accordingly, the contract to be entered into between ESD and the Designated Developer, if any, shall include clauses providing that the Designated Developer remain “responsible” throughout the term of the contract, that ESD may suspend the contract if information is discovered that calls into question the responsibility of the contracting party, and that ESD may terminate the contract based on a determination that the contracting party is non-responsible. On request, model language to this effect will be provided to any Respondent to this RFP.

To assist in the determination of responsibility, ESD requires that all respondents to this RFP register in the State's Vendor Responsibility System (“VendRep System”). The VendRep System allows business entities to enter and maintain their Vendor Responsibility Questionnaire information in a secure, centralized database. New York State Procurement Law requires that state agencies award contracts only to responsible vendors. Respondents are to file the required Vendor Responsibility Questionnaire online via the VendRep System or may choose to complete and submit a paper questionnaire. Please include a copy of your VendRep submission receipt with your proposal. If you submit a paper questionnaire please submit it using certified mail and provide a copy of the return receipt.

To enroll in and use the VendRep System, see the System Instructions available at [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep) or go directly to the VendRep system online at [http://www.osc.state.ny.us/vendrep/forms\\_vendor.htm](http://www.osc.state.ny.us/vendrep/forms_vendor.htm). For direct VendRep System user assistance, the Office of the State Comptroller's Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at [helpdesk@osc.state.ny.us](mailto:helpdesk@osc.state.ny.us).

Respondents opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website [http://www.osc.state.ny.us/vendrep/forms\\_vendor.htm](http://www.osc.state.ny.us/vendrep/forms_vendor.htm) and execute accordingly pertaining to the company's trade industry. Per the website, respondents are to “Select the questionnaire which best matches the business type (either For-Profit or Not-For-Profit) and business activity (Construction or Other).” For ESD RFPs concerning the purchase and redevelopment of real estate, it is most common for a Respondent to complete the form as a “Non-Construction” company. Unless the Respondent is primarily a Construction firm, the Respondent should thus fill out the Vendor Responsibility Questionnaire as a “Non-Construction” entity, either as a For-Profit or Not-For-Profit entity, depending on the Respondent organization type.

### **3. Iran Divestment Act**

Every Proposal made to ESD pursuant to a competitive solicitation must contain the following statement, signed by the Respondent on company letterhead and affirmed as true under penalty of perjury:

"By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law."

The list in question is maintained by the Office of General Services. No Response that fails to certify compliance with this requirement may be accepted as responsive.

### **4. Non-Discrimination and Contractor & Supplier Diversity Requirements**

#### **Business Participation Opportunities for Minority- and Women-owned Business Enterprises (MWBES)**



[New York State Executive Law Article 15-A](#) and [Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations](#) requires State agencies to promote opportunities for the maximum feasible participation of New York State-certified Minority- and Women-owned Business Enterprises (“MWBEs”) and the employment of minority group members and women in the performance of State projects.

For this Project, ESD has established an overall goal of **30%** MWBE participation: **15%** for New York State-certified Minority-owned Business Enterprise (“MBE”) participation and **15%** for New York State-certified Women-owned Business Enterprise (“WBE”) participation (based on the current availability of MBEs and WBEs). The Designated Developer must document its good faith efforts to provide meaningful participation by MWBEs in the completion of the Project. The directory of NYS-certified MWBEs can be viewed at <https://ny.newnycontracts.com>. For guidance on how ESD will evaluate the Designated Developer’s “good faith efforts,” refer to [5 NYCRR § 142.8](#).

Each Respondent understands that only sums paid to MWBEs for the performance of a “commercially useful function,” as that term is defined in [5 NYCRR § 140.1](#), may be applied towards the achievement of the applicable MWBE participation goal. For any contract where an MWBE performing a commercially useful function serves as a “[supplier](#),” as identified in the commodity codes of their NYS MWBE certification profile, only sixty (60) percent of the total value of the contract will be counted towards the MWBE goal. For any contract where an MWBE performing a commercially useful function serves as a “[broker](#),” as identified in the commodity codes of their NYS MWBE certification profile, only the monetary value for fees, or the markup percentage, charged by the MWBE will be counted towards the MWBE goal. Utilization credit may not be reported under any circumstances for work performed by an NYS-certified MWBE for which that MWBE is not coded to perform.

In accordance with [5 NYCRR § 142.13](#), each Respondent further acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the General Project Plan and other conveyance documents resulting from this RFP, such finding constitutes a default, and ESD may impose liquidated damages.

By submitting a Proposal, each Respondent agrees that if selected as the Designated Developer, it will demonstrate its good faith efforts to achieve the applicable MWBE participation goals by submitting evidence thereof through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>; provided, however, that the Respondent may arrange to provide such evidence via a non-electronic method by contacting the Office of Contractor and Supplier Diversity (“OCSD”) at [OCSD@esd.ny.gov](mailto:OCSD@esd.ny.gov).

The Respondent must submit an MWBE Utilization Plan on Form OCSD-4 (see link below) as part of its Proposal. ESD may disqualify a Respondent as being non-responsive for failure to submit an MWBE Utilization Plan. By signing the MWBE Utilization Plan, each Respondent acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, loss of eligibility to respond to future RFPs.

Once a Designated Developer is selected, any modifications or changes to an accepted MWBE Utilization Plan through Project completion must be reported on a revised MWBE Utilization Plan and submitted to ESD for review and approval. ESD will review the revised MWBE Utilization Plan and advise the Designated Developer of ESD acceptance or issue a notice of deficiency within 30 days of receipt.

If a notice of deficiency is issued, the Designated Developer will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to OCSD at [OCSD@esd.ny.gov](mailto:OCSD@esd.ny.gov) a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ESD to be inadequate,

ESD will notify the Designated Developer and direct it to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for default.

The Designated Developer will be required to attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan to complete the Project. The Designated Developer will be required to submit a monthly MWBE Contractor Compliance & Payment Report to ESD by the 10<sup>th</sup> day following the end of each month until Project completion, documenting the progress made toward achievement of the MWBE goals. The Designated Developer may request a partial or total waiver of established goal requirements up until Project completion.

### **Equal Employment Opportunity Requirements**

By submitting a Proposal in response to this RFP, each Respondent agrees with all of the terms and conditions in **SCHEDULE B - PARTICIPATION BY MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES** located online at <https://esd.ny.gov/sites/default/files/SCHEDULE%20B.pdf>. Each Respondent is required to ensure that it, and any entities with which it contracts or partners to work on this Project, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to this Project; or (ii) employment outside New York State.

The Respondent is required to submit a Minority- and Women-owned Business Enterprise and Equal Employment Opportunity Policy Statement (Form OCSD-1, see link below) to ESD with its Proposal.

If a Respondent is selected as the Designated Developer for this Project, it must submit a Workforce Utilization Report (Form OCSD-3, see link below) and shall require any entities with which it contracts or partners on this Project to submit a Workforce Utilization Report, in such format as shall be required by ESD on a monthly basis through Project completion.

Pursuant to [Executive Order #162](#), the Designated Developer will also be required to report the gross wages paid to each of their employees for the work performed by such employees on the Project, utilizing the Workforce Utilization Report, on a quarterly basis.

The required forms referenced above can be found at the following web addresses:

#### **Required with Proposal:**

**Form OCSD-1:** <https://esd.ny.gov/sites/default/files/OCSD-1-Policy-Statement.pdf>

**Form OCSD-2:** <https://esd.ny.gov/sites/default/files/OCSD-2-Staffing-Plan.pdf>

**Form OCSD-4:** <https://esd.ny.gov/sites/default/files/OCSD-4%20Utilization%20Plan.pdf>

#### **Required if selected as the Designated Developer:**

**Form OCSD-3:** <https://esd.ny.gov/sites/default/files/OCSD-3-Workforce-Utilization-Report.xlsx>

**Form OCSD-5:** <https://esd.ny.gov/sites/default/files/OCSD-5-Waiver-Request-Form.pdf>

**Form OCSD-6:** <https://esd.ny.gov/sites/default/files/OCSD-6%20-%20Contractor%20Compliance%20Payment%20Report.pdf>

In the event that the above links are unavailable or inactive, the forms may also be requested from OCSD at [OCSD@esd.ny.gov](mailto:OCSD@esd.ny.gov).

**Business Participation Opportunities for Service-Disabled Veteran-Owned Businesses (SDVOBs)**

[Article 17-B of the New York State Executive Law](#) provides for meaningful participation in State projects by New York State-certified Service-Disabled Veteran-Owned Businesses (“SDVOBs”), to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of ESD projects.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in New York State, Respondents are expected to consider SDVOBs in the completion of this Project. Such participation may be as contractors or suppliers, as protégés, or in other partnering or supporting roles.

For this Project, ESD has established an overall goal of **3%** for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, each Respondent should reference the directory of New York State-certified SDVOBs found at <https://online.ogs.ny.gov/SDVOB/search>. Questions regarding compliance with SDVOB participation goals should be directed to the Designated Contacts. If selected as the Designated Developer, the Respondent is encouraged to contact the Office of General Services’ Division of Service-Disabled Veterans’ Business Development at 518-474-2015 or [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss additional methods of maximizing participation by SDVOBs in the Project.

In accordance with [9 NYCRR § 252.2\(i\)](#), the Respondent is required to submit a completed SDVOB Utilization Plan on Form OCSD-4 (see link above) as part of its Proposal. ESD may disqualify any Respondent’s Proposal as being non-responsive if the Respondent fails to submit an SDVOB Utilization Plan. By submitting a Proposal, each Respondent agrees that if selected as the Designated Developer, it will demonstrate good faith efforts to provide meaningful participation by SDVOBs in the Project.

The Utilization Plan shall list the SDVOBs that the Respondent intends to use on the Project, a description of the work that the Respondent intends the SDVOB to perform to complete the Project, and the estimated dollar amounts to be paid to an SDVOB or, if not known, an estimate of the percentage of total project cost the SDVOB will perform. By signing the Utilization Plan, each Respondent acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, loss of eligibility to respond to future RFPs.

If selected as the Designated Developer, the Respondent certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs in the Project pursuant to the prescribed SDVOB contract goals set forth above. The Respondent further agrees that a failure to use SDVOBs as agreed in the Utilization Plan may constitute a default and result in penalties including, but not limited to, loss of eligibility to respond to future RFPs.

If a Respondent is selected as the Designated Developer, it must report and submit any modifications or changes to its approved SDVOB Utilization Plan in a revised SDVOB Utilization Plan. ESD will review the revised SDVOB Utilization Plan and advise the Designated Developer of ESD acceptance or issue a notice of deficiency within twenty (20) days of receipt.

If a notice of deficiency is issued, the Designated Developer agrees that it will respond to the notice of deficiency within seven (7) business days of receipt, by submitting to ESD a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ESD to be inadequate, ESD will notify the Designated Developer and direct it to submit within five (5) business days of notification by ESD, a request for a partial or total waiver of SDVOB participation goals on Form OCSD-5 (see above). Failure to file the waiver form in a timely manner may be grounds for default.

Prior to submission of a request for a partial or total waiver, the Designated Developer will speak to ESD for guidance. In accordance with [9 NYCRR § 252.2\(m\)](#), a Designated Developer that is able to document good faith efforts to meet the goal requirements, as set forth below, may submit a request for a partial or total waiver on Form OCSD-5 (see above), accompanied by supporting documentation. If a request for waiver is submitted with the Designated Developer's SDVOB Utilization Plan and is not accepted by ESD at that time, the provisions of the clauses below will apply. If the documentation included with the Designated Developer's waiver request is complete, ESD will evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt. The Designated Developer may request a partial or total waiver of established goal requirements up until Project completion.

If ESD, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (Form OCSD-6, see link above), determines that the Designated Developer is failing or refusing to comply with the approved SDVOB goals and no waiver has been issued in regard to such non-compliance, SD may issue a notice of deficiency. The Designated Developer must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals, which must be made in writing to ESD.

In accordance with [9 NYCRR § 252.2\(n\)](#), the Designated Developer must document its good faith efforts toward utilizing SDVOBs on the Project. Evidence of required good faith efforts shall include, but not be limited to, the following:

- A. Copies of solicitations to SDVOBs and any responses thereto
- B. Explanation of the specific reasons each SDVOB that responded to any solicitations by the Designated Developer or any entities with which it contracts or partners to work on this Project, was not selected
- C. Dates of any meetings attended by Designated Developer with NYS-certified SDVOBs that ESD determined were capable of fulfilling the SDVOB goals set in the approved Utilization Plan
- D. Information describing the specific steps undertaken to reasonably structure the Project's scope of work for the purpose of contracting with, or obtaining supplies from, NYS-certified SDVOBs
- E. Any other documentation demonstrating good faith efforts to comply with established SDVOB goals

In accordance with [9 NYCRR § 252.2\(q\)](#), the Designated Developer is required through Project completion to report Monthly SDVOB Contractor Compliance to ESD for the preceding month's activity, documenting progress made towards achieving the SDVOB goals. This information must be submitted directly on the [New York State Contract](#)

[System](#) or via Form OCSD-6 (see link above), and should be completed by the Designated Developer and submitted to ESD at [OCSD@esd.ny.gov](mailto:OCSD@esd.ny.gov) by the 10th day of each month for the preceding month's activity, through Project completion.

In accordance with [9 NYCRR § 252.2\(s\)](#), any Designated Developer found to have willfully and intentionally failed to comply with the SDVOB participation goals may be in default and subject to damages as set forth therein.

## **5. Encouraging the Use of NYS Businesses in Contract Performance Form**

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, bidders/proposers for this ESD contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. In order for ESD to assess the use of New York State businesses in each Proposal, ESD requests that each Respondent complete the Encouraging Use of New York State Businesses in Contract Performance form, accessible here:

<https://cdn.esd.ny.gov/CorporateInformation/Data/ENCOURAGINGUSEOFNEWYORKSTATEBUSINESSESINCONTRACTPERFORMANCE.pdf>

## **6. Certification Under State Tax Law Section 5-a**

Any contract resulting from this solicitation is also subject to the requirements of State Tax Law Section 5-a ("STL 5-a"). STL 5-a prohibits ESD from approving any such contract with any entity if that entity or any of its affiliates, subcontractors or affiliates of any subcontractor makes sales within New York State of tangible personal property or taxable services having a value over \$300,000 and is not registered for sales and compensating use tax purposes. To comply with STL 5-a, all Respondents to this solicitation must include in their Proposals a properly completed Form ST-220-CA ([https://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf)), or an affidavit ([https://cdn.esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/STL\\_5A\\_Affidavit.pdf](https://cdn.esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/STL_5A_Affidavit.pdf)) that the Respondent is not required to be registered with the State Department of Taxation and Finance. Also, in accordance with the requirements of STL 5-a, any contract resulting from this solicitation will require periodic updating of the certifications contained in Form ST-220-CA.

## **7. Schedule A"**

Following final selection of a Designated Developer, ESD will prepare a contract defining all project terms and conditions and the Designated Developer's responsibilities in conformance with "Schedule A," which can be found at:

[https://esd.ny.gov/sites/default/files/ScheduleA-Services\\_Materials-3818.pdf](https://esd.ny.gov/sites/default/files/ScheduleA-Services_Materials-3818.pdf)  
[https://esd.ny.gov/sites/default/files/ScheduleA-Services\\_Materials-3818.pdf](https://esd.ny.gov/sites/default/files/ScheduleA-Services_Materials-3818.pdf)

Please note Respondents do not need to complete the entire Schedule A with the submission of their Proposal. However, Respondents should still review these terms, which are standard in all ESD contracts, and raise any concerns present prior to submission of their Proposal, as the Designated Developer will need to accept these terms prior to contract execution.

## **8. Project Sunlight**

This procurement is subject to the Public Integrity Reform Act of 2011. Under the Public Integrity Reform Act of 2011, "appearances" (broadly defined and including any substantive interaction that is meant to have an impact on the decision-making process of a state entity) before a public benefit corporation such as ESD by a person (also

broadly defined) for the purposes of procuring a state contract for real property (as contemplated in this RFP) must be reported by ESD to a database maintained by the State Office of General Services that is available to members of the public. If in doubt as to the applicability of Project Sunlight, Respondents and their advisors should consult the Laws of 2011, Ch. 399 for guidance.

**9. W-9 Form**

Provide a completed W-9 form (<https://www.irs.gov/pub/irs-pdf/fw9.pdf>), submit with proposal.

**10. EO 177 Certification**

In accordance with Executive Order No. 177 (issued on February 3, 2018, available here <https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO177.pdf>) any entity that provides goods or services to ESD must certify that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the New York State Human Rights Law. Accordingly, all Respondents must submit an EO 177 certification form with their proposal. The form can be found and printed using this link: <https://esd.ny.gov/sites/default/files/EO-177-Certification.pdf>

**11. Conflicts of Interest**

Respondent must attest it has read, understood and will comply with the following provisions <https://esd.ny.gov/sites/default/files/Conflict-of-Interest-Attestation-June-2019.pdf>. ESD shall have the right to disqualify any respondent to this BID PROPOSAL or terminate any contract entered into as a result of this BID PROPOSAL should ESD determine that the Respondent has violated any of these requirements.

**Gifts and Offers of Employment:** Respondent has not and shall not during this procurement and during the negotiation of any contract resulting from this procurement, offer to any employee, member or director of ESD, any gift, whether in the form of money, services, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the offer was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director. Respondent may not make any offers of employment or discuss the possibility of such offers with any employee, member or director of ESD who is involved in this procurement and/or resulting contract negotiation within at least 30 days from the time that the employee's involvement in this matter closed.

**Disclosure of Potential Conflicts:** Respondent shall disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated firm, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers/employers of the Respondent or former officers and employees of ESD, in connection with your rendering services enumerated in this BID PROPOSAL. If a conflict does or might exist, Respondent must describe how it would eliminate or prevent it.

**Disclosure of Ethics Investigations:** Respondent must disclose whether it, or any of its members, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any ongoing investigation or disciplinary action by the New York State Commission on Public Integrity or its predecessor State entities (collectively, "Commission"), and if so, a description must be included indicating how any matter before the Commission was resolved or whether it remains unresolved.



## Insurance Requirements

The Designated Developer will be expected to show evidence of the following insurance requirements, as listed below:

- A. Commercial General Liability insurance - \$1 million per occurrence / \$2 million aggregate.
- B. Auto Liability insurance - \$1 million per occurrence / \$1 million aggregate
- C. Excess Umbrella Liability insurance - \$10 million per occurrence / \$10 million aggregate minimum
- D. Professional Liability insurance - \$1 million minimum (preferably \$5 million)
- E. Worker's Compensation & Employer's Liability insurance at State statutory limits.
- F. Disability insurance coverage at State statutory limits.
- G. Builder's Risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles.

USA Niagara Development Corporation and the NYS Urban Development Corporation d/b/a Empire State Development, and the State of New York must be named as an additional insured on a primary and non-contributory basis on all of the following policies: Commercial General Liability, Auto Liability, and Excess Umbrella Liability policies. All policies above should include a waiver of subrogation in favor of the additional insureds.

## Deadline for Proposals

Respondents are required to submit all required documents electronically to [FirstOldFallsRFP2021@esd.ny.gov](mailto:FirstOldFallsRFP2021@esd.ny.gov) on or before **4:00 P.M. Local Time, on December 10th, 2021** and must include all items specified in this RFP.

## PROPOSAL REVIEW PROCESS

### Process Timetable

The following target dates are intended as a guide for the proposal process:

September 22nd 2021	RFP Issue Date
October 14 <sup>th</sup> 2021	Pre-Proposal Meeting/Tour
November 19 <sup>th</sup> 2021	Deadline to Submit Questions
December 10 <sup>th</sup> 2021	Due Date for Proposal Submissions
January 10 <sup>th</sup> -14 <sup>th</sup> 2022	Interviews of Development Teams
March 2022	Designation of Preferred Developer

### Review of Submissions

USA Niagara will review all proposals for completeness and compliance with the requirements of this RFP and may request from any or all of the proposers additional material, clarification, confirmation or modification of any submitted proposal, including proposals that are incomplete or non-conforming as submitted. Except at the request or by the consent of USA Niagara (which consent shall be in the sole and absolute discretion of USA Niagara), proposers will not be entitled to change their proposals once submitted.

A committee consisting of USA Niagara/ESD ("Selection Committee") shall review all proposals and may consult with USA Niagara advisors, if any.

A Preferred Developer shall be designated in the sole and absolute discretion of USA Niagara based upon the Evaluation Criteria.

### Evaluation Criteria

In reviewing and evaluating proposals the Selection Committee will consider such criteria (all criteria considered being referred to collectively as the "Selection Criteria") that, in USA Niagara's sole and absolute discretion, are in the best interests of USA Niagara. The criteria listed below are of significant concern:

- 1) Extent that the proposed Project advances the objectives outlined in the RFP. (15 points)
- 2) Extent that the proposed Project is consistent with *Niagara Falls Comprehensive Plan*, *Niagara Falls Zoning Ordinance*, and USA Niagara Urban Design Standards. (10 points)
- 3) Extent that the proposed Project yields the highest level of public benefits (e.g., private taxable investment, new jobs/opportunities, highest return on the land, external benefits to the City's setting [e.g., expansion of retail choices/offers, extension of visitor stay, quality of life improvements], etc.) with the least amount of public investment. (15 points)
- 4) The overall proposed quality of the development plan, design, proposed timetables, and the extent that the proposed Project complements and enhances local community development/tourism objectives and existing/planned development projects. (15 points)
- 5) Extent that the proposed Project Team demonstrates a proven track record in successfully completing similar urban redevelopment efforts. (15 points)
- 6) The quality of the overall financial plan and impact of the proposal, including (15 points):

- a) The use of reasonable and attributable assumptions;
  - b) The level of proposed private investment;
  - c) The level of demonstrated financial capacity to realize the proposed Project, documented through sources such as, but limited to expressions of interest from lenders, letters of credit, and/or performance bonding capacity; and
  - d) Projected long-term economic benefits to the local community (e.g., property/sales/bed tax revenues, job creation, etc.).
- 7) Firms will be evaluated on their Diversity Practices, as evaluated on the attached Diversity Practices Questionnaire. (10 points)
- 8) Extent that the proposed Project Team, and/or individual members or member firms on the Team, meet the requirements of the NYS Comptroller's Office and ESD policies on procuring Responsible Vendors, specifically in the following four major categories: (5 points)
- **Financial and Organizational Capacity to Undertake the Project:** Factors to be considered include, but are not limited to, assets, liabilities, recent bankruptcies, equipment, facilities, personnel resources and expertise, availability in consideration of other business commitments, or existence of appropriate accounting and auditing procedures for control of property and funds.
  - **Legal Authority to do Business in New York State:** Demonstrated by a foreign corporation's registration with the New York State Department of State under the Business Corporation Law or Not-for-profit Corporation Law (Note that both foreign and domestic businesses and not-for-profit corporations, limited partnerships, limited liability partnerships, and limited liability companies must all file documentation with the Department of State for such authority) and absence of any findings removing/preventing such authority.
  - **Integrity:** Factors to be considered include, but are not limited to, criminal indictments or convictions, civil fines and injunctions imposed by governmental agencies, anti-trust investigations, ethical violations, tax delinquencies, debarment by federal, state or local governments, or prior determinations of integrity-related non-responsibility.
  - **Previous Contract or Project Performance:** Factors to be considered may include reports of less than satisfactory performance, early contract/project termination for cause, contract/project abandonment, court determinations of breach of contract, etc.

## Developer Interviews

Following ranking of proposals, a number of developer teams (to be determined by the Selection Committee) may be asked to present their proposals to the Selection Committee.

After the interview process, the developers will receive a final ranking. USA Niagara will negotiate exclusively with the first ranked developer (i.e., the "Preferred Developer"). If during the negotiation, the Selection Committee concludes that it is unlikely an agreement will be finalized with the Preferred Developer, the Selection Committee will be at liberty to enter into negotiations with the second-ranked respondent and so forth until it enters into an acceptable agreement to undertake the Project or stop the process.

## TERMS AND CONDITIONS

### Deposit, Pre-Development Agreement, and Development Agreement

#### Deposit

Not more than twenty-five (25) business days after notification of selection by USA Niagara, the Preferred Developer must deliver the agreed-upon deposit ("Deposit") to USA Niagara. In the event that such proposer fails to deliver the Deposit within this specified period after notification of its selection, USA Niagara may de-designate that proposer. The Deposit shall be applied as liquidated damages for breach by the developer. The Deposit may be in the form of cash or an irrevocable standby letter of credit, satisfactory in all respects to USA Niagara, in their sole discretion.

The Deposit shall, among other things, secure the selected developer's obligation for timely submission of all documents and information deemed necessary by USA Niagara, and/or ESD in connection with a SEQRA review, documents such as development plans and construction documents, as well as proceeding with construction in a timely manner as set forth in the approved project completion schedule.

The submission of a proposal shall constitute an agreement by the submitting proposer to enter into both Pre-Development and Development Agreements. Except as provided below, in the event that a Preferred Developer with respect to the Site fails to promptly enter into the Pre-Development Agreement, USA Niagara may terminate the designation of the Preferred Developer.

Failure by USA Niagara for any reason to execute a Development Agreement with a developer will not create any liability on the part of USA Niagara/ESD, or any of its directors, officers, employees, agents, consultants or contractors, except that if USA Niagara shall fail to execute a Development Agreement with the developer where the developer has not breached any of the terms or conditions of this request and is not otherwise at fault, USA Niagara shall return the Deposit.

The submission of a proposal shall constitute agreement by the submitting proposer that the sole remedy for a USA Niagara breach of this RFP, Pre-Development Agreement, or the Development Agreement is the return of the Deposit.

#### Memorandum of Understanding

USA Niagara and the selected Preferred Developer will promptly enter into a Memorandum of Understanding ("MOU") that shall set out the principal terms and conditions that shall subsequently be entered into in the Development Agreement. During the period following designation of Preferred Developer's proposal and prior to execution of the Development Agreement, USA Niagara and the Preferred Developer, all agree to be governed by the MOU by which the project development will proceed, including but not limited to completion of environmental review by ESD as lead agency under the State Environmental Quality Review Act (SEQRA) at the developer's sole cost and expense; provision for insurance coverage and liabilities; approval of construction plans and timetables; budgets; and appropriate site safety and security arrangements.

#### Development Agreement

The Development Agreement will be provided to the selected Preferred Developer following designation. It is anticipated that the Development Agreement will be executed after completion of the environmental review process.

Upon receipt by USA Niagara of evidence satisfactory in all respects of valid permanent certificates of occupancy for all improvements and structures provided for in the approved plans, and provided that no default or dispute is in

existence, or deemed as imminent by USA Niagara, with respect to the Development Agreement, USA Niagara will apply the Deposit; first to then outstanding developer obligations in accordance within the terms and conditions of the Development Agreement; and if any remaining, second to the developer.

### Taxes and Incentives

No proposal shall be conditioned upon the receipt of tax abatements and/or any other economic incentives, although financial plans in proposals may identify funding “gaps” related to realization of the proposed development and potential options to addressing such gaps that may be considered by USA Niagara.

### Condition of the Site

Prior to disposition of the property, USA Niagara will undertake demolition of all structures currently present on the Site. Proposals should only contemplate a shovel ready site.

### Contingencies

All proposals must be submitted in accordance with the provisions, requirements, terms and conditions of this RFP. Proposals which are contingent or which are submitted in any other form will not be considered.

### Permits and Approvals

All major Site use and environmental review procedures and approvals for development of the Site will be under the New York State Environmental Quality Review Act ("SEQRA") and be subject to site plan review/approval by the Niagara Falls Planning Board. Construction on the Site by the Preferred Developer will also be subject to requirements of the following codes, where applicable:

- Building Code of New York State;
- Energy Conservation Construction Code of New York State;
- Fire Code of New York State;
- Fuel Gas Code of New York State;
- Mechanical Code of New York State;
- Plumbing Code of New York State;
- Property Maintenance Code of New York State; and
- Residential Code of New York State.

Redevelopment and reuse must comply with the federal Americans with Disabilities Act (ADA) and implementing regulations and standards.

The selected Preferred Developer is required, at its own expense, to: (1) obtain from all appropriate government authorities all construction and ancillary approvals for the development of the Site including, but not limited to, all site plan approvals, SEQRA documentation, building permits and approvals that would be required if the selected developer were the fee owner of the Site, and (2) comply with all applicable federal, state, and local laws and regulations.

The Preferred Developer shall have no rights to the use or occupation of any private property or City of Niagara Falls sites adjacent to the Site for purposes of staging, storage, construction, access, scaffolding or any other purpose without first obtaining a Special Permit from the City. The Special Permit shall contain provisions deemed material and necessary to safeguard the property and may include specific provisions for appropriate insurance and indemnification satisfactory to USA Niagara and the City in all respects.

## Submission of Proposals

Only proposals that comply with all provisions, requirements, terms and conditions outlined in this RFP will be considered for review by USA Niagara.

USA Niagara reserves the right to independently investigate or request clarification of the contents of any proposal, including requiring any proposer to provide additional information or to make an oral presentation. All materials submitted in response to this RFP become USA Niagara's property without any obligation to return such materials. All determinations of completeness of any submission and its compliance with the provisions, requirements, terms and conditions of this RFP and the eligibility or qualification of any proposer shall be in the sole and absolute discretion of USA Niagara. USA Niagara may waive any of the provisions, requirements, terms and conditions of this RFP.

Subsequent to submission of proposals in response to this RFP, USA Niagara, in the exercise of their sole and absolute discretion, may enter into parallel negotiations with two or more proposers, may designate two or more proposers for "short list" consideration, may request best and final offers, and/or may conduct other additional competitive proceedings with respect to the potential disposition covered by this RFP.

## Expenses

USA Niagara shall not be liable for any costs or expenses (including, without limiting the foregoing costs and expenses of legal counsel) incurred by any proposer in responding to this RFP, in connection with the Site or under any other circumstances, including, without limiting the foregoing, whether or not a particular proposal was accepted, rejected or otherwise designated or selected or if USA Niagara selects not to proceed with the disposition process. All costs and expenses incurred by each proposer in connection with this RFP or the Site will be borne by the proposer, including, without limiting the foregoing, all costs and expenses in connection with: surveys, reports, studies, research and other due diligence work; preparation of each proposal; advice and representation of legal counsel; responding to this RFP, the MOU, and the Development Agreement.

## Brokers

Proposals shall be accepted from principals only. No brokerage fees, finder's fees, commissions or other compensation will be payable by the State or USA Niagara in connection with the selection of a proposer or the disposition of the Site. Submission of a proposal by a proposer in response to this RFP constitutes an undertaking by the proposer to hold harmless and indemnify and defend the State and USA Niagara from and against any and all expenses, damages or liability (including, without limiting the foregoing, attorneys' fees and disbursements) arising out of any claim for such fees, commissions or other compensation made in connection with such proposer's response to this RFP, selection or (non-selection) thereunder, and/or execution (or non-execution) of a Pre-Development Agreement and Development Agreement.

## Not an Offer

This RFP does not constitute a solicitation or an offer for the Site or any portions thereof, nor a solicitation or offer to the Site or any portions thereof. Neither USA Niagara/ESD, the State, any of the State's agencies, departments, offices, public authorities or other entities, nor any affiliate or subsidiary of any of the foregoing, shall incur any obligation or liability on account of this RFP or any submission made in connection with this RFP or any other reason unless and until a Development Agreement setting forth all the terms and conditions of the transaction have been fully executed and unconditionally delivered by all the parties thereto and all necessary consents and approvals for USA Niagara's entry into such agreements have been obtained including, without limiting the foregoing, approval by USA Niagara.

No proposal for the Site shall be deemed accepted until closing on the Development Agreement has occurred.



USA Niagara reserves the right, in their sole discretion, not to select or accept one or more proposals submitted for the Site in connection with this RFP, including, without limiting the foregoing, the highest-ranked proposal for the Site. USA Niagara has no obligation, under this RFP or otherwise, to dispose of the Site, or any portion of the Site, through a competitive proposal process, including, without limiting the foregoing, to dispose of the Site to the highest proposer or proposers. USA Niagara may at any time withdraw the Site, or any portion of the Site, included in this RFP. USA Niagara has the right in their sole and absolute discretion to reject any and all proposals, to accept any proposal, and to elect not to proceed with the process set forth in this RFP. USA Niagara may, at any time, dispose of the Site, or any portion of the Site, in any appropriate manner.

USA Niagara has no obligation to discuss its reasons for selecting, accepting or rejecting any proposals with any proposer.

## GENERAL CONDITIONS

Neither the State, USA Niagara nor ESD make any representations or warranties whatsoever with respect to this RFP, without limiting the foregoing, representations or warranties as to: the accuracy or completeness of any information or assumptions contained in or provided in connection with this RFP or otherwise furnished to respondents; the use or development, or potential use or development, of the Project or any portion thereof; the physical condition, environmental condition, layout, configuration, size, boundaries, access, location, systems and utilities for all land and improvements constituting the Project and for the adjacent properties; the absence or presence of hazardous substances or toxic materials in, under or upon the Project and the adjacent properties; compliance with environmental laws; tax assessments that may be made by the City, tax rates that may be established by the City and/or the amount of PILOT payable; and the suitability of the Project for any specific uses or development.

Each respondent shall make its own analysis and evaluation of the Project Site, including, without limiting the foregoing: the physical condition, environmental condition, layout, configuration, size, boundaries, access, location, systems and utilities for all land and improvements constituting the Project and for all adjacent lands; the absence or presence of hazardous substances or toxic materials in, under, or upon the Project Site and adjacent lands; compliance with environmental laws; and the suitability of the Project Site for any use or development. Each respondent shall obtain its own independent legal, accounting, engineering and technical advice on all matters relating to the Project, including, without limiting the foregoing: examination, review and verification of any information provided by or on behalf of the State, ESD, USA Niagara and its advisors; land and improvements constituting the Project Site and adjacent to the Project Site; all local laws, regulations and conditions that may affect the use and development of the Project; and all other matters that may be material.

Respondents shall not rely upon any statement or information given to respondents by the State, ESD or USA Niagara including, without limiting the foregoing, any information contained in this RFP or made available pursuant to this RFP, or otherwise.

In the event that the selected respondent does not execute a Development Agreement for the Project, USA Niagara may, in their sole discretion, invite any of the other respondents to participate in a further competitive process to determine a new selected respondent.

In addition to those terms and conditions stated elsewhere, this RFP is subject to the following:

- a. The preferred developer must comply with all applicable federal, state and local laws and regulations.
- b. The preferred developer must accept the Project Site in “as is, where is” condition on the date of disposition.
- c. Conveyance by USA Niagara shall be governed by a Development Agreement.
- d. Demolition, removal, alteration or conversion of any existing improvement or portions thereof at the Project Site is to be performed at the sole cost and expense of USA Niagara prior to closing under the Development Agreement.
- e. USA Niagara will not pay for or refund any costs and expenses incurred by any respondent in responding to this RFP or subsequent selection stages or by any preferred developer following selection and/or designation.
- f. All determinations as to the completeness or compliance of any response/proposal or as to the eligibility, qualification or capability of any respondent will be within the sole and absolute discretion of USA Niagara.
- g. Selection or designation of any respondent pursuant to this RFP or subsequent selection stages will not create any rights for the respondent including, without limitation, rights of enforcement, equity or reimbursement. USA Niagara shall have no obligation or liability whatsoever to any person or entity whose response/proposal is

selected or designated as a result of this RFP unless and until a Development Agreement shall have been fully executed and delivered by all parties thereto and all necessary consents and approvals necessary for USA Niagara entry into such agreement have been obtained, and then all such obligations and liabilities shall be solely in accordance with the terms and conditions of such Development Agreement.

- h. A respondent may be rejected if USA Niagara determines, in their exercise of sole and absolute discretion, that such respondent, any respondent partner, or member of a respondent team or any principal, partner, officer, director, affiliated person, or principal shareholder of the respondent, of any respondent partner, or of any member of a respondent team, has been convicted of, or pled guilty or nolo contendere to, a felony or crime of moral turpitude, is an “organized crime figure,” under indictment or criminal investigation, or is in arrears or in default on any debt, contract, or obligation to or with USA Niagara, ESD, the State, or any of their respective affiliates, subsidiaries, agencies, departments or instrumentalities. Each respondent, respondent partner, and member of a respondent team and any principal, partner officer director, affiliated person, or principal shareholder of the selected respondent, respondent partner, or member of the respondent team may be required to complete a background questionnaire with respect to the foregoing, or other matters, and may be subject to investigation by USA Niagara, ESD and the State. USA Niagara is under no legal obligation to dispose of the Project through a competitive bid process. This RFP does not constitute an offer of any nature and does not obligate USA Niagara to undertake any action or to proceed with the Project.
- i. USA Niagara will review all responses/proposals for completeness and compliance with the terms and conditions of this RFP, and may request from any and all of the developers, at any time during the selection process, additional information, material, clarification, confirmation or modification of any submitted response and/or proposal. USA Niagara may also, but is not obligated, to make requests for additional material or for clarification or modification of any submitted response and/or proposal which is incomplete or non-conforming as submitted. Submission of a response and/or proposal shall constitute the respondent’s permission to USA Niagara to make such inquiries concerning the respondent and members of the respondent’s team as USA Niagara, in their sole discretion, deem useful or appropriate including, without limitation, authorization to contact the respondent’s bank(s) and credit references, and any other persons identified in the proposal and to obtain pertinent financial and other information. Except at the request or by the consent of USA Niagara, in their sole discretion, no respondent will be entitled to change its proposal once submitted.
- j. USA Niagara may at any time exclude those proposals which, in their sole discretion, fail to demonstrate the necessary qualifications for development, or which fail to comply with the terms and conditions of this RFP.
- k. USA Niagara reserves the right, in their sole discretion, to reject at any time any or all proposals; to withdraw the request without notice; to negotiate with one or more developers submitting proposals and/or to negotiate with respect to, and dispose of the Project (including to parties other than those responding to this request) on terms other than those set forth herein. USA Niagara reserves the right to waive compliance with and/or change any of the terms of this request and to waive any informalities or irregularities in the request process.
- l. Under no circumstances will USA Niagara pay or be liable for any costs incurred by a firm/team in responding to this RFP or subsequent stage or in connection with the transfer of the Project Site.
- m. Responses and/or proposals shall be accepted from principals only. No brokerage fees, finder’s fees, commissions or other compensation will be payable by the State, ESD, or USA Niagara in connection with the selection of a respondent or the disposition of the Project Site. Submission of a statement of interest and/or proposal in response to this RFP or subsequent stage constitutes an undertaking by the respondent to hold harmless and indemnify and defend the State, ESD and USA Niagara from and against any and all expenses, damages or liability (including, without limiting the foregoing, attorneys’ fees and disbursements) arising out of

any claim for such fees, commissions or other compensation made in connection with such respondent's response to this RFP or subsequent stage, selection or (non-selection) thereunder or execution (or non-execution) of a Development Agreement.

- n. Respondents of this RFP shall make no news/press release pertaining to this RFP or anything contained or referenced herein without prior written approval from USA Niagara. Any news release pertaining to this RFP may only be made in coordination with USA Niagara.
- o. Public access to material submitted by respondents to this RFP or subsequent stage shall be governed by the relevant provisions of the Freedom of Information Law, which constitutes Article 6 of the New York State Public Officers Law ("FOIL"), and regulations adopted pursuant thereto. If any respondent submits information which it believes to be a trade secret or otherwise exempt from disclosure under FOIL, it must specifically identify such information and state in writing the reasons why the information should be exempt from disclosure. Notwithstanding the foregoing, USA Niagara shall not be liable if USA Niagara releases information pursuant to FOIL which the respondent believes to be a trade secret or detrimental to its business.
- p. In the event that USA Niagara becomes aware of any material misrepresentation in the information supplied by a developer, USA Niagara shall have the right to reject at any time the response and/or proposal of the respondent, to refuse to negotiate or continue negotiations with the respondent and to take any other action, including retaining any deposit made by the respondent, as shall be deemed appropriate by USA Niagara, in their sole discretion.
- q. The selection of a preferred developer will create no legal or equitable rights in favor of the selected developer, including rights of enforcement or reimbursement. A developer's response and/or proposal for the Project Site is not assignable and only the party identified as the developer/principal in the selected developer's submission will be permitted to execute the Development Agreement.
- r. By submitting a response and/or proposal for the Project, the developer agrees to be bound by all the terms and conditions of this RFP.

## APPENDIX A: STATEMENTS AND FORMS TO BE SUBMITTED WITH PROPOSAL

- Qualifications & Proposal per Requirements of this RFP.
- Attachment 1 – Signed & Notarized Proposer Certification
- Attachment 2—RFP Workbook
- All Procurement Forms listed under “Procurement Forms and Requirements” on pages 14-22 of this RFP.